

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	4:99CR3040
	)	
Plaintiff,	)	
	)	
vs.	)	<b>MEMORANDUM</b>
	)	<b>AND ORDER</b>
MICHAEL A. EALEY,	)	
	)	
Defendant.	)	

The defendant, Michael A. Ealey, has filed a motion for modification of his sentence pursuant to 18 U.S.C. § 3582(c)(2), which provides:

The court may not modify a term of imprisonment once it has been imposed except that . . . in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

Ealey argues that all of the Sentencing Guidelines ranges have “subsequently been lowered” by the Supreme Court’s decision in United States v. Booker, 125 S.Ct. 738 (2005). By its plain language, however, 3582(c)(2) is not implicated by a decision of the Supreme Court that is unrelated to an actual amendment of the guidelines. See United States v. Privette, No. 04-10758, 2005 WL 995951, \*1 (5th Cir. April 29, 2005) (unpublished opinion).

Because Ealey has previously filed a motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255, and because he cannot file a second or successive motion under that statute without certification by the United States Court of Appeals for the Eighth Circuit, his § 3582(c)(2) motion cannot be treated as a § 2255 motion and considered on its merits by this court.

Accordingly,

IT IS ORDERED that the defendant's motion for modification of sentence (filing 95) is denied.

DATED: May 5, 2005.

BY THE COURT:

s/ Richard G. Kopf  
United States District Judge